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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-99-134-51223 Office: Vermont Service Center Date: 19 MAR 2002

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER: [REDACTED]

Public Copy

INSTRUCTIONS:

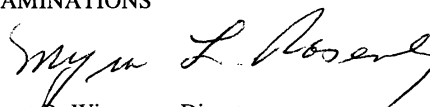
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and in a subsequent motion to reopen, the director's decision was affirmed. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a film production company. A page copied from the beneficiary's passport shows that the beneficiary was admitted as a B-1, visitor for business, on June 1, 1999 until November 31, 1999. It appears an error was made regarding the beneficiary's departure date. The petitioner seeks to employ the beneficiary temporarily in the United States as the manager/producer of its new office for three years. The director determined that the petitioner had not established that the beneficiary will be employed primarily in a managerial or executive capacity in the United States, or that the petitioning entity will support such a position within one year of its operation.

On appeal, counsel states that the beneficiary is a manager because of the petitioning entity's trust of her with the investment monies and her position as the sole signatory of said funds.

To establish L-1 eligibility under Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

The issue in this proceeding is whether the beneficiary will be employed primarily in a managerial or executive capacity in the United States, or that the petitioning entity will support such a position within one year of its operation.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The United States petitioning entity was incorporated on November 17, 1998. Information contained in the record shows that it is a subsidiary of Sri America Travel Corporation SDN. BHD., located in Malaysia. The petitioner seeks to employ the beneficiary for three years at an annual salary of \$26,000.

The Description of Titles describes the beneficiary's duties in the proposed position in the United States as follows:

Supervises and controls selection of scripts, approves changes in script, arranges for financing and oversees film production. Makes executive level decisions

regarding sales of shares to investors to finance production. Hires director and line producer, provides an anchor person for key personnel to access for consultation, decision making and arbitrates key personnel disputes. Formulates business management policies and controls production schedules.

The foreign entity states in its letter dated October 1, 1999 that the beneficiary's responsibilities are hiring and firing of all employees, supervising two permanent managers, who in turn would be responsible for the 80-100 other employees hired, evaluating all employees and findings reported to the mother company, making recommendations on improving the business and the supervising and controlling of employees.

The letter states further that all the employees hired by the company are film professionals, however, the record, as it is presently constituted, does not contain evidence of the hiring of such professionals.

Upon review of the record, the petitioner has not presented convincing evidence to show that the beneficiary will be employed in the United States in an executive or managerial capacity. The beneficiary's duties in the United States are not reflective of duties that are of an executive or managerial nature. There is no evidence to establish that the petitioner will employ a subordinate staff of professional, managerial, or supervisory personnel in the United States who will relieve the beneficiary from performing nonqualifying duties.

The duties of the beneficiary's proposed subordinate staff have been described in the record and do not confirm that these individuals will hold supervisory, professional, or managerial positions. Both the Act and the Service regulations state that a first-line supervisor is not considered to be acting in an executive capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv). The record is not sufficient in demonstrating that the beneficiary will be primarily engaged in exercising managerial control and authority over a function, department, subdivision or component of the U.S. entity.

In conclusion, the description of the beneficiary's duties do not demonstrate that the beneficiary will be employed in managing or directing the management of a department, subdivision, function, or component of the petitioning organization. It must be evident from the documentation submitted that the majority of the beneficiary's actual daily activities will be primarily managerial or executive in nature. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in an executive or managerial capacity. Consequently, the petitioner has not

established that the beneficiary will be employed primarily in an executive or managerial capacity, or that the petitioning entity will support such a position within one year of operation. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.